

GREAT CO.

IBLA 88-304

Decided December 21, 1989

Appeal from a decision of the Area Manager, Monument Resource Area, Idaho, Bureau of Land Management, establishing fair market rental charges for water pipeline and road right-of-way I-22091.

Affirmed.

1. Appraisals--Rights-of-Way: Appraisals

Under 43 CFR 2803.1-2(c)(1)(v), the authorized officer is required to use the fee schedule set forth at 43 CFR 2803.1-2(c)(1)(i) in establishing the rental for a linear right-of-way, unless the authorized officer determines that a substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10 and in the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal. When BLM makes the determination required by the regulation, it may properly calculate the rental for a linear right-of-way on the basis of an appraisal.

2. Appraisals--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Appraisals

Where a right-of-way holder charges that the fair market rental value determined by BLM is in error, but shows no error in BLM's appraisal method and provides no evidence to establish that BLM's appraisal is excessive, the Board will affirm BLM's determination.

APPEARANCES: Judith S. Ebeling, Secretary, the Great Company, Sun Valley, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Great Company has appealed from a decision dated February 25, 1988, by the Area Manager, Monument Resource Area, Idaho, Bureau of Land Management (BLM), establishing the fair market rental value for water pipeline and road right-of-way I-22091.

BLM granted right-of-way I-22091 to River Rock Ltd., on September 25, 1985, pursuant to section 501 of the Federal Land Policy and Management

Act of 1976, (FLPMA), 43 U.S.C. § 1761 (1982). The right-of-way, comprising 1.14 acres in sec. 1, T. 4 N., R. 17 E., Boise Meridian, Blaine County, Idaho, was issued for a term of 30 years. River Rock Ltd., sought the right-of-way to provide access and water to a 40.37-acre tract, zoned for a single residence and described in the right-of-way application as "one of the most desirable building sites in the Ketchum area."
1/

Paragraph 7 of the grant specified that the holder would pay an interim rental fee of \$25 per 5-year period "pending issuance of new regulations and determination of fair market rental." 2/ By decision dated April 24, 1986, BLM modified the right-of-way to include an area of 0.51 acre for a drain-field for an onsite sewage disposal system, thereby increasing the total right-of-way acreage to 1.65 acres. 3/

[1] Under regulations issued effective August 7, 1987, annual rentals for linear rights-of-way are generally to be determined in accordance with a "per acre rental fee zone value schedule," which is established by BLM by state, county, and type of use, and which is updated annually. 43 CFR 2803.1-2(c)(1)(i). This fee schedule must be used unless the authorized officer determines:

(A) A substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10; and

(B) In the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal.

43 CFR 2803.1-2(c)(1)(v); Snyderville Basin Sewer Improvement District, 111 IBLA 235 (1989).

By memorandum dated September 8, 1987, to the Shoshone District Manager, the District Staff Realty Specialist, citing the conditions in 43 CFR 2803.1-2(c)(1)(v), recommended an appraisal, noting that the actual land value was estimated at about \$5,000 per acre, or 16.66 times the zone value of \$300. He stated that under the 1987 schedule rate, the rental would be \$22. He further stated:

Since right-of-way appraisals cost about \$500 to complete (this includes site R/Ws that are more costly than linear types) the

1/ River Rock Ltd., sold the 40.37-acre tract to Great Company in March 1986.

2/ This rate of payment was directed by BLM Instruction Memorandum No. 84-490, Change 1, dated Nov. 28, 1984, which instructed all BLM offices, pending approval of regulations implementing a uniform system of appraisal for all types of linear rights-of-way, to limit charges for new rights-of-way to a fixed rental. Rental rates for linear rights-of-way by state and county appear in a schedule published at 52 FR 25821 (July 8, 1987).

3/ On June 23, 1986, BLM approved an assignment of I-22091 from River Rock Ltd., to Great Company and on Apr. 11, 1989, from Great Company to Theodore Nicolai.

expected rental over the life of the appraisal would have to be greater than the difference between the cost of the appraisal and the rental established using the schedule to warrant an appraisal. With a normal reappraisal term of five years, the appraised rental for five years would have to exceed \$390.00 [$\$500 - (5\text{yrs.} \times \$22/\text{yr.})$].
[4/]

This memorandum satisfied the requirements of 43 CFR 2803.1-2(c)(1)(v). See Snyderville Basin Sewer Improvement District, supra at 237.

By appraisal approved February 12, 1988, BLM established fair market rental value for I-22091 at \$750 per year. In its decision, BLM billed appellant a total of \$2,412.50, for the period 1985 through 1988. 5/

The right-of-way site lies just north of the corporate limits of Ketchum, Idaho, in an area highly desirable for recreation and residential use. BLM's appraiser determined fair market value of the right-of-way using two factors: the size of the "larger parcel" crossed by the right-of-way and the probable use to which the larger parcel might be put. Considering additional factors such as zoning and terrain features, BLM estimated that the larger parcel would embrace about 20 acres. BLM then used the market comparison approach to estimate the value of that subject 20-acre parcel. The sales of four tracts zoned for residential use, and including the sale of the 40.37-acre tract from River Rock Ltd. to Great Company, were analyzed. The four sales reflected a range of values from \$6,192 to \$17,986 per acre. From an overall comparison of the subject 20-acre parcel to these sales, BLM estimated its fee value at \$16,500 for the 1.65 acres, or \$10,000 per acre. Using a 9 percent rate of return and half of the fee value, BLM arrived at an annual rental of \$750 (Appraisal at 4, 11-12, 14-17).

Appellant contends that BLM's valuation is too high. However, much of appellant's argument is misdirected in that appellant apparently believes that the subject property appraised by BLM was the 40.37-acre building site. It was not. The subject parcel appraised by BLM was the 20-acre tract, containing the 1.65-acre right-of-way, lying between the 40.37-acre building site and Highway 75. Thus, appellant's arguments that "the market value of the subject parcel of 40 acres was estimated based on a comparison of other properties that are not of the same value and characteristics;" "[t]he subject property of 40 acres is limited by the City of Ketchum, to a single family dwelling, unlike the compared properties;" and "[t]he property in question, unlike those compared to, has no electricity, natural gas, sewer, or city water, and is the site of a former trash dump for the City of Ketchum,"

4/ By recommending an appraisal, the BLM realty specialist apparently estimated that the expected rental determined by appraisal would, over the life of the appraisal, be greater than the difference between the cost of the appraisal and the scheduled rental.

5/ BLM charged appellant \$750 per year for 1986-1988, and \$162.50 for 1985 ($\750.00×0.25 (part-year factor) minus the advance payment of \$25).

are not relevant to whether or not BLM properly determined the fair market rental value of the right-of-way in this case. The only contention of any pertinence is appellant's assertion that the right-of-way contains less than 1.65 acres. Appellant, however, provides no evidence in support thereof.

[1] Under section 504(c) of FLPMA, 43 U.S.C. § 1764(g) (1982), the holder of a right-of-way is required to pay rental annually in advance for the fair market value of the right-of-way when this value is established by an appraisal. Harvey Singleton, 101 IBLA 248 (1988); Glover Communications, Inc., 89 IBLA 276 (1985); see also Southern California Gas Co., 81 IBLA 358 (1984); Mountain States Telephone & Telegraph Co., 79 IBLA 5 (1984). The Board will not set aside a right-of-way rental appraisal absent a demonstration of error in the appraisal method used by BLM or a showing, by convincing evidence, that the charges are excessive. Jim Doering, 91 IBLA 131 (1986); Glover Communications, Inc., *supra*; Southern California Gas Co., *supra*. In the absence of compelling evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal. Mallon Oil Co., 104 IBLA 145, 150-151 (1988); Delbert Jones, 100 IBLA 289, 291 (1987).

Appellant has shown no error in BLM's appraisal method. It has not provided its own appraisal, and it has adduced no evidence supporting its allegations that rental, as determined by the appraisal, is excessive. Consequently, no reason to disturb the appraisal or BLM's decision has been demonstrated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

David L. Hughes
Administrative Judge